



## POLICE DEPARTMENT

September 23, 2009

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Edmund Rumman  
Tax Registry No. 931117  
28 Precinct  
Disciplinary Case Nos. 82415/06 & 82416/06  
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The above-named member of the Department appeared before me on April 15, 2009, charged with the following:

Disciplinary Case No. 82415/06

1. Said Police Officer Edmund Rumman, assigned to the 28<sup>th</sup> Precinct, between about August 30, 2006 and about September 20, 2006, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, in that said Police Officer engaged in a course of conduct or repeatedly committed acts which alarmed or seriously annoyed another person, known to the Department, and which served no legitimate purpose, in that said Police Officer, after attending said other person's wedding, repeatedly telephoned said other person to inform her that he was in love with her, and did come to said other person's place of employment, known to the Department, where said Police Officer questioned and threatened said other person.

P.G. 203-10, Page 1, Paragraph 5 – GENERAL REGULATIONS

2. Said Police Officer Edmund Rumman, assigned to the 28<sup>th</sup> Precinct, on or about September 20, 2006, at or about a location known to the Department, [REDACTED] New York, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, in that said Police Officer placed or attempted to place another person, known to the Department in fear of injury, in that said Police Officer went to said other person's place of employment and threatened to strike said other person with a nightstick or similar object.

P.G. 203-10, Page 1, Paragraph 5 – GENERAL REGULATIONS

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3. Said Police Officer Edmund Rumman, assigned to the 28th Precinct, on or about September 21, 2006, wrongfully and without just cause possessed an unauthorized duplicate New York City Police Department shield, #31806.

P.G. 203-10, Page 2, Paragraph 17 – GENERAL REGULATIONS

Disciplinary Case No. 82416/06

1. Said Police Officer Edmund Rumman, assigned to the 28<sup>th</sup> Precinct, on or about September 28, 2006, on or about [REDACTED] New York, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, in that said Police Officer intentionally disobeyed or resisted the lawful process or other mandate of a court, to wit, said Police Officer drove back and forth on said street, in violation of a valid order or protection issued on September 21, 2006, by Judge Norman Janowitz, [REDACTED] Criminal Court, in Docket [REDACTED], directing said Police Officer to stay away from and to have no contact with an individual, known to the Department, residing on said street.

P.G. 203-10, Page 1, Paragraph 5 – GENERAL REGULATIONS  
N.Y.S. Penal Law Section 215.50(3) – CRIMINAL CONTEMPT IN THE  
SECOND DEGREE

The Department was represented by David Green, Esq., Department Advocate's Office, and the Respondent was represented by Paul Martin, Esq.

The Respondent, through his counsel, pleaded Not Guilty to Specification Nos. 1 and 2 in Disciplinary Case No. 82415/06, and to Specification No. 1 in Disciplinary Case No. 82416/06. The Respondent pleaded Guilty to Specification No. 3 in Disciplinary Case No. 82415/06. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

In Disciplinary Case No. 82415/06, the Respondent is found Not Guilty of Specification No. 1, and Guilty of Specification No. 2. Having pleaded Guilty to Specification No. 3, he is

found Guilty. The Respondent is found Guilty of Specification No. 1 in Disciplinary Case No. 82416/06.

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Shannon Roberts.

Shannon Roberts

Roberts was 25 years old and a high school teacher in [REDACTED] Before that she worked in a dentist's office in [REDACTED] also in [REDACTED] as a receptionist. Roberts met the Respondent at Adelphi University through a group of friends at the student center where they ate lunch. She was introduced to him through a friend of hers, Mandy. Mandy introduced Roberts to the Respondent as one of her friends.

Roberts said "We started speaking, then we saw each other more on campus and we spoke more often. We just became friends." They were both students at Adelphi at the time. At the time she met the Respondent, she had a boyfriend, Steven Maclosky, whom she ultimately married a year later, and subsequently divorced.

Roberts said that the Respondent "came out" to her and said that he was gay. She said this happened not more than two weeks into their "relationship." Roberts testified that a couple of her friends had known he was gay and had already told her.

Roberts testified that she lived in an apartment in [REDACTED] (also in [REDACTED] with Maclosky. [REDACTED]

[REDACTED]. She said that Maclosky and the Respondent became close friends.

The Respondent "used to be over all the time, used to eat dinner with us, used to eat lunch with us. He was always around my home," so the men became friends.

Roberts agreed that the Respondent was her best friend and that they would speak frequently, occasionally five times a day. She said "Yeah, we spent time together, we would speak on the phone. You know, he was around my home with me and my fiancé all time. We all became friends. If anything the three of us became close friends." They would all go out together, and the Respondent would come over for Christmas and Thanksgiving. Roberts said that when she introduced the Respondent to Maclosky, she introduced Maclosky as her fiancé.

Roberts met the Respondent's parents about a couple of months into their relationship. She said she was introduced to them as his friend, Shannon.

Roberts denied that at any time did she and the Respondent have anything more than a platonic relationship. She said that they had briefly discussed the Respondent's sexuality other than the time he came out to her and the time he told her about coming out to his father. She said she had made a "couple of comments here and there." She said she would ask him if he dated men or if he dated women. He said he had dated both.

Roberts testified that about six months after they met, the Respondent told her he had a falling out with his father about his sexual orientation. The Respondent said his father kicked him out and he needed a place to stay. Roberts testified that when the Respondent told her, she spoke with Maclosky, and the Respondent essentially ended up staying on their couch with them. She had a one-bedroom apartment that "was very – it was small." The couch was a regular couch, not a sofa bed. She said the Respondent stayed with her for about two months, saying "I can't be a hundred percent sure on the length of time, but it was a while." She agreed that he brought his possessions into her apartment, such as clothes and "some stuff. He would go

grocery shopping with her and “Anything he liked would also be in the fridge.” If the Respondent was around, he would go out to eat and out on the weekends with them.

Roberts testified that she had started planning her wedding to Maclosky even before she met the Respondent. The Respondent assisted her with her wedding plans by going with her to get bridesmaid gifts, helping her pick out shoes, and helping her plan the rehearsal dinner. She denied that Maclosky raised any objections to her friendship with the Respondent, saying “He loved him. He didn’t have any problems.”

Roberts testified that at some point the Respondent ended up working things out with his father and went back home. This happened before her wedding, which was May 28, 2006. The Respondent was invited to the wedding and there was discussion about him having a special role in it. She said her fiancé wanted him to be a groomsman, but she thought it was a little too close to the wedding to start making different arrangements, and they already had an equal number of groomsmen and bridesmaids. They spoke with the Respondent about it and decided against it.

Roberts agreed that prior to her wedding she and the Respondent had a conversation about whether or not she should get married. She said that took place about a week before the wedding. The Respondent told her he wasn’t sure if she should get married. Roberts did not find this strange because she was only 21 years old (as was Maclosky) and many people had raised the same concerns, that she was too young to get married. Roberts testified that she brushed off the Respondent’s concerns.

Roberts denied that during that conversation the Respondent discussed any feelings he had for her other than perhaps friendship, that prior to her wedding she had any reason to believe that the Respondent had more-than-friendly feelings toward her, or that her relationship with the Respondent changed after she got married. She still spoke to the Respondent several times a

day. He called her at work, they still went places together, and he would still come over and do things with her and Maclosky. Roberts denied that these relationships changed in any way after she got married.

Roberts agreed that her relationship with the Respondent changed in September 2006. They had gotten into an argument "about something, I honestly don't even remember, it was that insignificant and that long ago. . . . It was probably something stupid." She assumed to "[j]ust leave it for a week, it will be fine, you know, pick up where we left off. . . . We spent a lot of time together and were very close friends, so it wasn't weird."

Roberts testified that she stopped answering her phone when the Respondent called. She believed this took place in September 2006. Roberts said that at that time the Respondent would call her "very frequently," more than ten times each day and "occasionally" leave messages on her cell phone. His messages said that he was sorry and that he wanted to talk to her. The messages were not angry or threatening.

In September 2006, Roberts testified, she answered the phone when the Respondent called because she "just wanted to answer it, I guess. I felt bad." They got into an argument on the phone. He told her that he wasn't gay and was straight, that he was in love with her, that he wanted to be with her and she should be with him. She said his tone was not angry, just upset.

Roberts said she got a little aggravated on the phone and said to the Respondent "You're a homo, you're not straight. That's impossible." She said they argued back and forth and she repeated herself six or seven times. She said that the Respondent responded to her comments by saying that he changed his mind, that he was straight. She said this went back and forth for a couple of minutes and the conversation ended when she hung up on him.

Roberts was unsure if “the next thing was him coming to my job. I don’t remember if that was the next thing in the course of events. It was a while ago.”

Roberts testified that the dentist whom she worked for was named Maureen Treadwell. The office was on [REDACTED] Avenue in [REDACTED] and was attached to Treadwell’s house. The dentist had two young children. Generally there would be four other workers in the office. Roberts would take lunch generally around noon.

Roberts said that on Thursday, September 21, 2006, she had lunch and was standing outside the office. There were no other workers or any other people around that she recognized. She testified that during her lunch period, a recording informs callers that the office was out to lunch and would re-open in an hour.

Roberts testified that she was outside leaning against her truck smoking a cigarette. The office faces [REDACTED] Avenue, a busy two-lane street. Roberts said she knew the Respondent to drive a blue BMW at that time, and she saw a blue BMW pull up in front of the dentist office that day. The Respondent “jumped” out of the car and started coming up the driveway. He was wearing a t-shirt, sweatpants, and a belt. She did not see any weapons on him at that point. “To the best of my understanding, when I described it, . . . the conclusion we came to” was that the belt was a police belt. Upon the Court’s questioning, she agreed that it could have been a weightlifting belt.

Roberts described the Respondent as “very frantic, like very upset. . . . He came right up to me, and he basically continued the conversation that we had had on the phone.” The Respondent was just freaking out, doing a lot of mumbling, asking me what was wrong with me.” She said “maybe about an hour” had passed from the phone conversation where she hung up on him to this incident where he pulled up outside her workplace.

Roberts said the Respondent's tone of voice was "[v]ery nervous. . . . He was yelling, but it wasn't an angry yell. It was more like a nervous yelling. Like very nervous trying to get his point across." She said the Respondent was very close to her, right in her face, and agreed that if she had taken a step, she would have bumped into him.

Roberts testified that the Respondent said that he loved her, that he didn't understand why she wasn't answering her phone, why she wasn't talking to him, and why she was avoiding him. While he was saying this, he was moving around a lot and started walking in a circle. He was looking at her while he spoke, and he spoke for "probably two minutes maybe."

Roberts said that in response she laughed, asked the Respondent what he was doing there, and told him it was ridiculous that he was coming to her job. She said she laughed because it was "a little ridiculous." At that point she did not feel threatened in any way. She said she kept saying "What are you doing. . . . What's wrong with you?" and he continued saying "What's wrong with you, why aren't you answering my calls." She said this went on for "a couple of minutes."

Roberts said the next thing she knew, the Respondent pulled a "stick thing out, this metal thing" and hit her in the ribs. She described it as a metal nightstick. It was black, and "a tiny bit longer" than the Trial Room microphone.

Roberts stated that the Respondent was walking in a circle, pulled the metal object up from his back, and swung it. Roberts demonstrated the Respondent's actions, described by the Court as "From the waistband of his back, and then swung it with a forward downward motion with his right hand." She said it was "one pull and swing" and that it happened so fast that she "didn't even have a second to react." He used his right hand.



Roberts testified that she was struck on her lower right rib cage. She believed she was hit with the tip of the stick. She said it happened so fast that she did not remember, and could not demonstrate in Court, the force or speed of the swing. She said it hurt a lot initially, and then it hurt for the rest of the day and left a small mark which was first red then turned into a bruise which lasted about two weeks. She admitted that she did not take any medication for it or see a doctor. She said it hurt when she walked. Her ribs were not broken, and it did not hurt to sit or drive.

Roberts did not say anything to the Respondent after he struck her with the baton, and he did not say anything to her. She testified that after he hit her with the baton, she interpreted his expression as "shock. . . . like, oh my God." The Respondent got in his car and left. On direct examination, Roberts testified that she stayed outside for another minute or two to smoke another cigarette and then went back to work inside. On cross-examination, she stated that she was already finished with the cigarette when the Respondent left.

Roberts did not call the police. She said she was scared to go to the police because the Respondent was a police officer and she believed police officers stick together and she did not think they would believe her. There were no other witnesses around; Roberts asserted that everyone was out to lunch. She did not tell anyone what happened when people came back from lunch, or call anyone.

Roberts said the first person she told was a friend, Benny, who is now her boyfriend. She told Benny that night because he had received an anonymous text message that said "I just hit your girlfriend with a nightstick." Roberts testified that Benny called the women in his phone book because he didn't have a girlfriend, so he had no idea who it was. Benny reached her and she asked how he knew.

Roberts said that after Benny contacted her, she told him what happened. "He kind of freaked out. He put me in the car and took me over to my father's house." When they got to her father's house, Benny told her father what happened and then her father got in the car and they went to the 7 Precinct in [REDACTED]

Roberts testified that she met with members of the [REDACTED] Police Department (NCPD) and told them what happened. The Respondent was arrested. Roberts said she spent the entire night at the precinct. An order of protection was issued by [REDACTED] District Court in her favor directing the Respondent to stay completely away from Roberts (see Department Exhibit [DX] 1, Order of Protection dated Sept. 21, 2006).

In the interim, detectives went to Roberts' house and installed a "caper" alarm, which, if the button is pressed, bypasses 911, and alerts all the police officers on duty in the area. Roberts said she had one that she wore on her neck and one that was in her home.

Roberts did not have any contact with the Respondent between the day he was arrested until a week later.

On Friday, September 22, 2006, Roberts called her job and stated she was not coming to work because she had spent the whole night at the precinct. She called out again on Saturday. She spoke with Treadwell and said she might have to take some time off and the doctor told her to take as much time as she needed. When she spoke to Treadwell on Monday, the doctor told her she felt a little threatened, had spoken to her husband about the incident, and the fact that they lived at the same place where the place of business was made her "very uncomfortable" and "very worried" if the Respondent were to come back. As a result, Roberts was fired. She testified that she understood her employer's reaction and would feel the same way if she had children.

Roberts testified that on September 28, 2006, she was standing outside her residence on [REDACTED] in [REDACTED] with her mother. It was about 7:00 or 8:00 p.m. Roberts did not remember if it was daylight, but “[t]hat block is really lit up.” It was after dinner and she and her mother were outside smoking a cigarette. She lived on a side street that was “usually very, very quiet” and “really not a short cut for anything or anywhere.” She had the basement apartment in somebody else’s house.

Roberts testified that the Respondent was living with his father in Bay Shore, about 40 minutes from [REDACTED]. The Court took judicial notice that Bay Shore is east of [REDACTED] [REDACTED] that they are both more or less on the south shore of Long Island, that Bay Shore is in Suffolk County and [REDACTED] is in [REDACTED].

Roberts said a blue BMW came down the street. She and her mother noticed it right away. The car made a U-turn right in front of her house. Roberts described the distance as “There is grass and a sidewalk, and a little patch of grass, then the street.” She said that from the witness stand in the trial room (Room B), the BMW was about at the back wall of the trial room or maybe a little closer.

Roberts said when the blue BMW made a U-turn, they could not tell who was operating the car because the windows were tinted. Her mother got the license plate number, they hit the caper alarm around her neck and the police came.

Roberts testified that the police connected the license plate to the Respondent’s car. The police told her they were going to go look for the Respondent, and while the police were still at her house, she heard over the radio that they found him at a gym not far from her house, Synergy. Roberts denied that she or her mother was a member of that gym, or that either was

anywhere near the gym that day. The gym was in [REDACTED] where the [REDACTED] intersects with [REDACTED]

Roberts said it would take eight minutes to drive from her residence to the gym. She learned from the police that the Respondent had been arrested at that gym. She indicated that the gym was located between the Respondent's residence and her residence.

On cross-examination, Roberts denied that she ever professed her love to the Respondent, either orally or in writing. Roberts denied that she ever told the Respondent that she was terminally ill or that she was suffering from a terminal stomach condition.

Roberts testified that she went on a school-break trip with the Respondent to Orlando, Florida. She admitted that Maclosky did not attend. She denied that it was just the two of them. She agreed that Respondent's Exhibit (RX) A was a photograph of her and the Respondent on the Florida trip. She agreed that she graduated from Adelphi in May 2006, and that the trip was during college.

RX A is a black-and-white photocopy of a photograph showing Roberts and the Respondent posing at Planet Hollywood. They are standing closely next to each other, if not actually touching. Their bodies are turned in toward each other but their faces are posed toward the camera, smiling.

Roberts denied that she recognized a greeting card, RX D. She denied that it contained her handwriting. There was a puppy on the front of the card, and the copy read, "If you weren't already in my life . . . I'd follow you home and ask you to keep me." It is not dated.

Handwritten inside is:

I'm not signing this card because I don't want any evidence linking back to me! [¶] Don't get all teary eyed, thinking I'm mushy & shit, but I figured that I would take 1 whole second & tell you how much you mean to me. Apparently someone told me that I was falling for you, but through

all of my denial I think I already have (but if anyone ever asks me, I'll deny it!) Just know, no matter what I care about you more than I'll ever be able to show you. Always remember that.

Roberts denied recognizing or writing a Friendly's restaurant children's drawing (RX E1 is the original fold-out paper; RX E is a photocopy of the handwritten portion) with the following writing: "To my pussy cop, You know how much I care for you. I cherish every second I spend with you. [heart] Your dumb / hot girlfriend." It is dated October 8, 2005.

Roberts also denied recognizing or writing RX F, an undated handwritten letter on looseleaf paper that read as follows:

My Dearest Eddie,

This is, by far, the hardest thing I've ever had to write. I don't really know exactly what to say or how to say it for it to come out right, but I'm sure going to try. First off, let me tell you how much you've grown on me. I never knew how attached I could become to someone in just a couple of weeks. I enjoy spending time with you (even though your a pussy with a gun). I still feel safe with you! I don't really know how to do this but, I can't see you anymore. Don't bug out, let me explain. I could see myself falling so deep in love with you & vice versa. But I'm sick, sicker than you know. Denial is my answer because apparently that's what I'm in. I am getting worse. And although I am not afraid to die, I am afraid of what I will leave behind. I could never handle the responsibility of hurting you because I got too sick. Do you understand? I want nothing more than to be with you because I truly do like you. Remember when I told you not to fall in love with me? This is why. I could never handle hurting you. I won't get into detail about what's wrong with me today, but I can tell you that the infection in my mouth has spread to my stomach & it gets worse from there. But today, with you I will enjoy every minute. Please don't hate me or be mad at me. I just could never forgive myself for hurting you. I'm sorry for doing it like this, but I just couldn't bare to see the look on your face. It's enough that I'm upset. I wouldn't want to see you upset. I'm sorry for getting sick on you. It really amazes me how attached I got to you. But maybe you were the one person to make me laugh like you did. I don't know once again, I'm sorry for all of this. But at this point, there are no other options. Please respect me enough not to do a "pop-in" (he, he)! Thank you for being there for me & caring about me. Please don't ever forget me, I know I'll never forget you.

[heart], Your dumb/fat girlfriend

Roberts testified that “[f]rom what my friends told me,” and according to the Respondent himself, he was a student at Adelphi at the same time she was.

Roberts said that Benny is a friend of her older brother, Ryan Roberts, so “he was always a friend.” When asked, “Do you know Sam Naderi?,” she replied, “Sam Naderi, no,” but then stated that Naderi was Ryan’s friend. She denied that she met the Respondent through Naderi and Ryan.

Roberts denied that her husband, Maclosky, ever inquired of the nature of the relationship between her and the Respondent. She then stated that she told Maclosky that the Respondent was a friend of hers. She agreed that she would spend time alone with the Respondent at times, and that one of the reasons Maclosky did not have a problem with it was because she told him that the Respondent was gay. She agreed that when she was with the Respondent, it was more than likely he would be alone with her.

Roberts asserted that Benny hung out with her and the Respondent on two occasions.

Roberts did not know what an ASP (the brand-name expandable baton) was. She agreed the Respondent raised his hand with the nightstick and struck in a downward motion. She agreed that she did not testify that “he came across his body.” She denied he must have hit her on the left side of the body, saying that she was leaning on her “truck,” a Nissan Murano, and “wasn’t standing that way.” On re-direct examination, Roberts noted that she was leaning on her left side on her vehicle when the Respondent hit her. She was leaning this way “because I was smoking a cigarette.”

Roberts agreed that Benny was very alarmed about the first incident, that he took her to her father, that she then went to the precinct, and that she was still married at this time. Benny did not contact Maclosky.

Roberts said she could not remember if she was asked to fill out paperwork when the Respondent was first arrested, or if she wrote anything down. An item was shown to Roberts and she agreed she recognized it but denied it was her handwriting or that she wrote it. She said she did not know if the "detective lady" she was speaking with wrote and signed it, but she said that was not her handwriting.

Roberts admitted that she first told the police she had no visible injuries and that the Respondent did not hit her. She asserted that the police took a picture of a red mark on her body, but also agreed that it was fair to say that maybe at that time she did not have a visible injury.

RX B was a typed statement by Roberts to NCPD. She signed it, but someone else typed it up. It was dated September 21, 2006, at 1:25 a.m. In it, Roberts stated that the Respondent "pulled a nightstick off of his belt, and held it up in a motion to hit me. I asked him what are you going to do, hit me. He just blinked and walked away to his car. I was so afraid that Edmund was going to hit me with the nightstick. I was very nervous. I was in fear for my safety."

Several hours later, Roberts admitted, she told the police that he did hit her. RX C was another typed statement signed by Roberts, dated 5:10 a.m. In it, she wrote, "I need to amend" RX B "with the following fact." The Respondent "hit me in the stomach with his nightstick while he was at my job on 09/20/06 about 2:00 P.M. I do not have a visible injury but I do have a small amount of pain." Roberts wrote that she said in RX B that the Respondent "only threaten to hit me with the nightstick," and not that he "hit me with the nightstick, because I was afraid

too.” She wanted the Respondent arrested “for putting me in fear for safety and for hitting in the stomach with his nightstick.”

Roberts testified that she called Maclosky about the first incident once she was at the precinct. Maclosky, who was working at the time, did not come to the precinct; Benny stayed with her.

Roberts agreed that no one at the office knew about the incident until Friday. Roberts agreed that at the dentist’s office, she was “close” with a “girl” named Kristen, an oral hygienist. Roberts agreed that she would speak to Kristen, but when ask if she “would describe her as a friend,” Roberts said, “Just a co-worker really,” though they were “friendly.” Roberts did not recall Sergeant Dandola of the New York City Police Department asking her for Kristen’s number.

Roberts testified that she worked for almost an hour after the first incident. She was a little upset but not crying. She asserted that Kristen asked her what was wrong, but Roberts told her she didn’t want to talk about it.

Roberts said that she spoke to Dandola several times, but did not remember the conversation “a hundred percent.” She did not recall if Dandola asked her why she was fired. She admitted that she told Dandola, “We came to the conclusion when I had spoken to all the detectives and stuff, that honestly, I swear, I hate to say it in this case against him, but he didn’t mean to hit me. I’m telling you right now, he didn’t mean to. I know he didn’t. He meant to scare me a little bit, which he did. He barely nicked me at the end of it. He didn’t hit my hard enough for me to actually fall. It wasn’t like that. I think he just meant to scare the shit out of me.” She agreed that she did not say that he struck her to the point where it left a bruise.



Roberts agreed that for at least a year she was familiar with the Respondent's schedule, that he worked "pretty much" a 4x12 tour, and that he would leave at approximately 2:00 p.m. to make sure he got to work on time. She asserted that the Respondent's times for going to the gym varied.

Roberts conceded that during the incident on September 28, 2006, she was not a hundred percent sure, but she thought she hit her caper alarm and that was why the police came so fast. She admitted telling the police that the Respondent was usually at Synergy or that "he goes there."

Roberts admitted that she did not see the face of the Respondent as he drove by her house on September 28, 2006, saying "we just saw the shadow of a guy." She did not remember telling the police that she saw the Respondent driving the vehicle, and believed she told them she "saw a man." When asked if she recalled telling the police in a written statement that as she walked toward the vehicle she saw the driver was the Respondent, Roberts answered that if that was what she wrote, then that was what she said.

Roberts testified that she told the police about a third incident in which she was knocked unconscious by an assailant. She never identified the Respondent as that individual. She was treated and released at, she believed, Winthrop-University Hospital and was there "a couple of hours."

On redirect examination, Roberts stated that a couple of other people from Adelphi went on the Florida trip with her and the Respondent. One of the people that went on the Florida trip was Mandy. Everyone stayed in the same room. On recross-examination, Roberts stated that five people went.

Regarding RX B and C, Roberts testified that she changed her statement because she was “petrified” and did not think anybody would believe her. She said it was not her choice to go to the police, that Benny and her father were pushing her to report it. She said that when she left, she told Benny and her father the true story. When asked, “Did you still have any feelings for the Respondent?,” she answered, “Of course, he was still my best friend. I mean, in my head, you know, I was more worried, if anything.”

Roberts agreed that in the second statement, she indicated that she did not have any visible bruise. She said, “I must have got it afterwards. If I said there wasn’t one, there probably wasn’t one at the time, then it developed.”

Roberts agreed that in the statement to Dandola, before stating that the Respondent “nicked” or “barely nicked” her, the following exchange took place:

Roberts: I saw something snap like in the eyes, he snapped. He was a completely different person. It was like a switch went off in his head.

Dandola: Now, after the switch goes off, what’s next, he smacks you with a stick?

Roberts: Yeah, right in my ribs.

Dandola: He cracks you in the ribs with what kind of stick?

Roberts: Yeah, it was, I guess, we came to the conclusion it was one of the little metal nightsticks.

Roberts agreed that she talked to Kristen about the incident outside the dentist’s office a few days later, after Roberts was terminated. Roberts had worked there for about five months. She agreed that Kristen told her, after the incident, that Roberts’ cell phone usage had also become an issue.

Roberts asserted that she told Treadwell what had occurred the day after the incident. Roberts testified that Treadwell’s response was to ask her why she did not go in and tell her right away. Roberts replied that she was nervous, scared, and more shocked than anything else. She

testified that Treadwell told her that she understood and wished Roberts had come to her for help.

### The Respondent's Case

The Respondent testified on his own behalf.

### The Respondent

The Respondent was appointed to the Department in July 2002. He resided in Bay Shore in Suffolk County with his father. At age 19, he moved out of his mother's house in [REDACTED] and has been living with his father ever since. He denied that there was ever a period of time that he left his father's house for a month or two months.

The Respondent testified that he met Roberts in about August 2005. He said Roberts' brother Ryan was friends with the Respondent's friend Sam Naderi and he met her through the two of them.

The Respondent denied that he ever attended Adelphi University or hung out there. He stated that he attended the New York Institute of Technology at Old Westbury. He only visited Adelphi when he dropped off and picked up Roberts. This occurred, he claimed, while they were dating.

The Respondent said when he first met Roberts, they were just acquaintances. It developed into an intimate relationship sometime in September 2005. The Respondent denied ever telling Roberts that he was gay.

The Respondent stated that he and Roberts took a vacation together to Orlando. He believed they stayed at a Courtyard Marriott hotel. He denied that they were there with a group of people and said the two of them shared a room.

The Respondent described RX E1, the drawing. He said that he and Roberts went to Friendly's, and while they were waiting for their food there were crayons on the table. Roberts "felt compelled as we were drawing on this to write a little letter on it for me."

The Respondent said that from January 2006 until March 2006, he and Roberts still had an intimate relationship, but things began to change. He said that she informed him of several things, one of them being that she was "apparently terminally ill." Roberts wrote this in a letter she handed to the Respondent, RX F. The Respondent testified that he read it to himself as she sat next to him and then they talked about it afterwards. Roberts claimed to have stomach and cardiological problems, and told him that within a year, maybe more, she might die.

In regard to RX E1, which was signed "your dumb/hot girlfriend," and RX F, which was signed "your dumb/fat girlfriend," the Respondent said it was Roberts' way of joking around, "just to be, I guess, bubbly." He contended that her appearance was constantly changing. During the time he was seeing her, she seemed to be losing weight. He asserted that she "was always a thin girl, but she seemed to get thinner." When they would go out to eat, afterward, she would always complain that there was something wrong with the food or her stomach, and often she would throw up after dinner.

The Respondent testified that in January 2006, Roberts told him she was getting married, to Maclosky. Roberts told him that she and Maclosky were living together. The Respondent met Maclosky, socialized with him, and went to the Roberts-Maclosky residence. Nonetheless, the Respondent asserted, he and Roberts still had an intimate relationship. He said once he found

out that she was getting married, "things had slowed down" and they did not see each other as often. He denied that he ever lived with Roberts.

The Respondent described RX D, the puppy card, as an item he was given by Roberts at sometime in early 2006, possibly as late as March.

The Respondent said that from March 2006 until May 2006, "things slowed down even more once she got married." The wedding was in May. The Respondent contended that he still saw Roberts, and said they still talked just about every day, but there was not as much "physical contact" as before, meaning just "general contact. Face-to-face contact."

The Respondent said that from May 2006 until September 2006, Benny, a friend of Roberts' brother Kyle, started hanging out with Roberts a lot. He said this helped him "distance myself and realized that this was a situation I didn't need to be in."

The Respondent said he ended the relationship with Roberts, over the phone, during the second week of September 2006. He said that from the time he was arrested going back to the last time he had spoken to her was approximately a week.

The Respondent stated that as a police officer, he was given a standard duty belt with various attachments for his service weapon, magazines, handcuffs, and rings for his baton and flashlight. He said that when he was not using them on duty, he stored them in his locker at the precinct. He said he did not take the equipment home with him except for when he has training at Rodman's Neck, approximately twice a year. He denied that he was going to the range on September 20, 2006, or that he carried the belt home with him that day.

The Respondent agreed that September 20, 2006, was a workday for him and said that he gave himself at least an hour to get to work on time. He said that on that day, between 12:00 and 2:00 p.m., he was at home until he left for work. He denied that he went by Roberts' place of

employment, that he spoke to her over the phone, or that he threatened or struck her in any way on that date. He conceded that he had been invited to Roberts' place of business perhaps two times. He knew that she worked there as a receptionist in a dental office. He had driven there himself and she had given him directions.

The Respondent denied that on September 28, 2006, he was on [REDACTED] in [REDACTED] [REDACTED] at approximately 8:30 p.m. He was aware that Roberts lived on [REDACTED] He said at approximately 8:30 p.m. that day he was getting to his gym, Synergy, which was located on [REDACTED] and [REDACTED] He had gone to this gym for a long time. The Respondent said he was trying to make a left turn into the rear parking lot of the gym when NCPD officers stopped him for failing to use a turn signal. He was warned and admonished and he proceeded into the parking lot.

The Respondent said while looking for a parking space, he saw Roberts' mother Sharon to his right about one row over, in a row of cars. The Respondent parked his car, and when he got out, he saw Sharon walking toward the exit of the parking lot. The Respondent went inside, and from the window saw Roberts driving Sharon's car by the front of the gym with Sharon in the passenger seat. He said he continued with his workout. The Respondent testified that he was stopped by NCPD officers, who told him that Roberts had called and said that he had driven by her house.

The Respondent testified that he was subsequently prosecuted for the September 20, 2006, allegation, and that he pleaded guilty in January 2008 to two counts of Harassment in the Second Degree (Penal Law § 240.26 [1]). He asserted that he did so because his attorney at the time told him it would be the best course of action to get everything behind him and to keep his job.

On cross-examination, the Respondent testified he and Roberts never had intimate relations in her apartment when other people were there. When they were intimate, it was either in her residence, or in cars, “[m]ostly things like that.” Roberts only once spent the night at his house, the night before they left for the airport on the Florida trip.

The Respondent said when the Respondent was at Roberts’ apartment, Maclosky would stay in the bedroom. The Respondent would sometimes sleep on the couch while Roberts stayed in the bedroom with Maclosky. The Respondent testified that Roberts slept in the bedroom with Maclosky most of the time.

When asked if it seemed strange that they could never have sex at Roberts’ apartment, the Respondent said at the beginning of the relationship, Roberts did not want him coming around her place. He said the reason is obvious now, but at the time she said she did not know him very well and she did not want him to know where she lived yet.

The Respondent asserted that when he first spent the night at Roberts’ home, he observed the belongings of a man. Roberts “insisted that at that rate” she and Maclosky were “just friends,” explaining that they had been dating but since had broken up.

The Respondent said he and Maclosky talked about “guy stuff” like sports but did not have “deep conversations.” He denied that he ever discussed the type of relationship he had with Roberts when he was talking to Maclosky. When asked if Maclosky “just saw you as another guy in the apartment sleeping on the couch while he is in the bedroom with his girlfriend,” the Respondent answered, “As far as I was told by her, she told me not to ask him because everything was already explained to him and there was no need to bother him about it.”

The Respondent testified that after Roberts gave him the letter, RX F, in which she talked about her illness, that she asked him to continue their relationship and help her notwithstanding

her upcoming marriage to Maclosky. He admitted, nonetheless, that when he read the letter, it “basically is a good-bye. Saying thanks, but good-bye.”

The Respondent stated that he met a total of three of Roberts’ friends. He introduced Roberts to his father as his girlfriend.

The Respondent denied helping Roberts plan her wedding. He testified that they were still “seeing each other” and were intimate after the wedding, until their break-up in September 2006. The Respondent asserted that he could not remember what prompted the break-up with Roberts.

The Respondent agreed that he had received basic baton training in the use of various batons or nightsticks.

The Respondent agreed that there was a Synergy branch closer to his Bay Shore home than the [REDACTED] location. On questioning from the Court, however, the Respondent said that he could not go to any Synergy gym; he could only go to the particular branch where he purchased the membership. He became a member at [REDACTED] because when he joined he was frequenting Roberts’ house. Additionally, the Respondent said, he grew up in [REDACTED] where his mother still lived.

The Respondent testified that, as far as he knew, neither Roberts nor Sharon were members of the gym. He agreed that if he were going from his home to the gym in [REDACTED] he would not pass by Roberts’ residence, as the gym is before her house so he would have not reason to go near her residence at that point.

In answer to whether he remembered “specifically what it was you’re attorney did tell you . . . as to why you should plead guilty to harassment in the second degree in satisfaction of the charges against you,” the Respondent answered that counsel told him “there was a possibility



if it went to trial I could get found guilty of harassment. . . . [A]nd therefore I would be convicted of a crime and I have to worry about my job at that rate.”

The Respondent testified that his sentence was to attend anger management classes, which, he said, took place over a single afternoon. He admitted that he had to pay \$100 for the class, a cost he was unaware of at the time of the plea. He also had to pay a fine and court fees. In total, after pleading guilty, he had to pay over \$200. In addition, the Respondent agreed, there was an order of protection issued that directed him to stay completely away from Roberts. He claimed that he was unaware of the final order of protection.

In the Trial Room proceeding, the Respondent pleaded Guilty to Specification 3 in Disciplinary Case Number 82415/06, possessing an unauthorized duplicate New York City Police Department shield on or about September 21, 2006.

## FINDINGS AND ANALYSIS

### Introduction

The instant case centers on the relationship between Shannon Roberts and the Respondent. There is conflicting testimony on almost every aspect of this case, but on one point, the parties agree: the Respondent pleaded guilty to two counts of Harassment in the Second Degree (Penal Law § 240.26 [1]) in satisfaction of the criminal charges against him. The Respondent is not collaterally estopped by these convictions from contesting the charges in this forum. The questions of fact raised by the instant specifications – whether the Respondent placed or attempted to place Roberts in fear of injury by threatening to strike her with a nightstick or similar object, and whether he violated the subsequent order of protection – were

not necessarily determined by the criminal convictions of second-degree harassment. See Meades v. Spinnato, 138 A.D.2d 579, 580 (2d Dept. 1988).

Roberts testified that she became close friends with the Respondent, whom she met when they were both students at Adelphi University. In contrast, the Respondent testified that he never attended Adelphi and was actually a student at a different institution. Roberts testified that he disclosed that he was gay. The Respondent spent a lot of time at Roberts' residence, even while her fiancé, Maclosky, was present. Approximately six months later, the Respondent told Roberts that he had a falling out with his father over his orientation and needed a place to stay. Roberts testified that the Respondent remarked to her one time whether she was too young to get married, but did not express any feelings for her beyond friendship.

Roberts testified that in September 2006, she had an argument with the Respondent. She claimed not to remember what the argument was about. She stopped answering the phone when he called. The Respondent began calling her more than ten times a day. On occasion, he would leave a message saying he was sorry and asking to talk to her. Roberts testified that these messages were not angry or threatening. At one point, Roberts answered the phone. In this call, the Respondent told her that he was in love with her. He was not angry, "more upset." She got "a little, I guess, aggravated," and hung up on him.

Roberts testified that about an hour later, on September 21, 2006, the Respondent came to her workplace, a dentist's office where she worked as a receptionist. She was standing outside smoking a cigarette. He was wearing a t-shirt, sweatpants, and a belt, which she described either as a weightlifting belt or a "police belt," i.e., a Department equipment belt. Roberts said that the Respondent was frantic and upset, and continued the conversation they were having on the phone. His tone of voice was "a nervous yelling . . . trying to get his point across." He was

walking in a circle. Roberts laughed at him and told him it was “a little ridiculous” that he had come to her job. Nevertheless, she testified, she did not feel frightened.

After a couple of minutes, Roberts testified, the Respondent pulled a metal stick from behind his back and struck her in the ribs. He used his right hand and came straight downward. He struck Roberts in the right side of her body because, she contended, she was leaning against her vehicle at the time. Roberts asserted that this hurt “a lot.” She admitted, however, that she did not seek medical attention. She did not actually tell anyone what happened until she spoke with Benny, a man who was then her friend but had become her boyfriend by the time of trial.<sup>1</sup> Benny called her that night because he received an anonymous text message stating, “I just hit your girlfriend with a nightstick.”

Roberts testified that Benny brought her to her father’s house, and they all went to the NCPD. She stated that she did not want to report the incident, but Benny and her father pushed her to do so. Roberts admitted first telling the police that the Respondent did not hit her. She asserted that they took a photograph of a red mark on her body,<sup>2</sup> yet she agreed she might not have had a visible injury. She claimed that Benny and her father asked her what really happened after they left the NCPD precinct, and she told them that the Respondent had struck her. Roberts noted that the Respondent was “still my best friend,” and she was “more worried, if anything.” Nevertheless, in her second statement to the NCPD, Roberts said she did not have a visible bruise. Roberts admitted telling Dandola, the NYPD investigator, that the Respondent “barely nicked” her and only meant to scare her. She did not tell Dandola that the strike left a bruise.

Roberts testified that she received an order of protection, and that NCPD installed a “caper” alarm for her, allowing her to summon police without going through 911. She

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<sup>1</sup> Benny, whose full name was not in evidence, did not testify.

<sup>2</sup> No photograph of this type was introduced into evidence.

contended that on September 28, 2006, she was outside her residence when she saw a blue BMW, the type of car the Respondent drove. The BMW made a U-turn in front of her house. At trial she testified that the windows were tinted, although she admitted she may have said in a written statement that she saw the Respondent driving. She hit her caper alarm and the police came. The Respondent was arrested a second time, at his gym, which was in [REDACTED] a hamlet over from Roberts' residence.

The Respondent testified that he and Roberts had a sexual affair. He presented several documents in support of his assertion that he and Roberts were more than friends, including handwritten letters and cards purportedly from her. He suggested that Roberts told Maclosky he was gay so that the fiancé would not be suspicious of the Respondent and Roberts spending time together. The Respondent testified his sexual relationship with Roberts continued even into 2006, when she was living with her fiancé and married him, in May 2006. The relationship did slow down after the engagement and marriage, and the Respondent finally ended it after Roberts began spending time with Benny, a third man. The break-up occurred during the second week of September 2006. The Respondent was arrested about a week after speaking to Roberts last.

The Respondent denied going to Roberts' job on September 20, 2006, or calling her on that day. He admitted that he had visited there before. The Respondent denied that on September 28, 2006, he was on Roberts' street in [REDACTED]. He said that he was first stopped by NCPD while driving into the gym parking lot for failing to use a turn signal, and given a warning. The Respondent claimed he saw Roberts and her mother in the parking lot of the gym. He was then stopped again by NCPD.

Disciplinary Case No. 82415/06, Specification No. 1

In the first specification, the Respondent is charged with engaging in a course of conduct that “alarmed or seriously annoyed” Roberts and that “served no legitimate purpose.” Allegedly, “after attending [Roberts’] wedding,” the Respondent “repeatedly telephoned [her] to inform her that he was in love with her, and did come to [her] place of employment,” where he “questioned and threatened” her. The specification generally tracks the language of Penal Law § 240.26 (3), a different subsection than that under which the Respondent was convicted in criminal court. The statute states that a person is guilty when, with intent to harass, annoy or alarm another, he “engages in a course of conduct or repeatedly commits acts which alarm or seriously annoy such other person and which serve no legitimate purpose.”

Viewing the evidence in a light most favorable to the Department, the Court finds that the Department failed to prove a course of conduct that was intended to harass Roberts. A course of conduct requires a pattern composed of the same or similar acts repeated over a period of time, however short, that establishes a continuity of purpose. People v. Payton, 161 Misc. 2d 170, 173-74 (Crim. Ct., Kings County 1994). It requires, nonetheless, more than an isolated incident. People v. Wood, 59 N.Y.2d 811, 812 (1983). The Department at most proved that coming to Roberts’ workplace, then questioning her about the relationship and “threatening” her with a metal object, was intended to harass, annoy or alarm her. While there is no requirement that each discrete act in a putative course of conduct be harassing in nature, the course of conduct as a whole must be intended to harass. For example, in People v. Tralli, 88 Misc. 2d 117 (App. Term, 2d Dept. 1976), the defendant was hired to repair a piece of furniture in the complaining witness’ den. He called her into the room to speak to her, and under the pretense of having her inspect his work, he maneuvered her into a position where she would observe he had exposed

himself. The Court noted, "Here, defendant actually created the situation and his actions constituted a course of conduct."

There was no evidence that the Respondent's phone calls were intended to harass, annoy or alarm Roberts, and there is no indication that she took them that way. Roberts stated that the Respondent was calling her ten times a day, but that the messages he would occasionally leave were not angry or threatening. These messages related that he was sorry and wanted to talk to her. When they did finally speak on the phone, the Respondent told Roberts that he was in love with her. She "got a little, I guess, aggravated on the phone" and told him "you're a homo, you're not straight, that's impossible." He answered "no, he changed his mind, he was straight." They "went back and forth a whole bunch of times" until Roberts hung up. In the context of communication, "no legitimate purpose" means the "absence of expression of ideas or thoughts other than threats and/or intimidating or coercive utterances." People v. Shack, 86 N.Y.2d 529, 538 (1995); cf. M.W. v. S.W., 2007 N.Y. Misc. Lexis 2865, \*\*10-11 (Sup. Ct., Westchester County) (father's calling mother six times to speak to the children after he had heard mother state that there was a "situation" involving the children was "neither harassment nor inappropriate"). Because the Department failed to demonstrate that these calls were part of a course of conduct intended to harass Roberts, the Respondent is not guilty of the specification.

Disciplinary Case No. 82415/06, Specification No. 2; Disciplinary Case No. 82416/06,  
Specification No. 1

In these specifications, the Respondent is charged with coming to Roberts' workplace and threatening to strike her with "a nightstick or similar object." The Respondent was arrested

and an order of protection was issued. Approximately one week later, he already drove past her residence, violating the order of protection.

One area of documentary evidence that might have helped demonstrate which witness was lying about their relationship was the alleged correspondence: RX D, the greeting card; RX E1, the Friendly's drawing and note; and RX F, the letter. Roberts denied having anything more than a platonic relationship with the Respondent, whereas he claimed it turned sexual shortly after they met. None of the documents are signed with a name. Two are signed, "Your dumb/fat girlfriend," or "Your dumb/hot girlfriend." The Court observes that Roberts was a thin individual, although the Respondent intimated in his testimony that she had an eating disorder and thus might have viewed herself as overweight. No exemplar of Roberts' handwriting was offered into evidence. Roberts' address and phone number are on the bottom of the statements she gave to NCPD, RX B and C, although there was no testimony that this was her writing. Nevertheless, as a non-expert, the Court cannot conclude that the handwriting on the NCPD statements is the same as that in RX D-F. Further, the Court finds it odd that Roberts, if she did write these documents, would not sign her name to even one of them. If, *arguendo*, she were trying to hide the relationship, one would still expect that Maclosky, her husband, would recognize his own wife's handwriting.

The photograph from the Florida trip, RX A, is similarly inconclusive. It could show a man and a woman who were close platonic friends, or a romantic couple.

There are reasons for caution in accepting the version of either Roberts or the Respondent. The Respondent suggested that Roberts concocted the charges against him because she was angry at him for breaking up with her. As counsel put it on summation, "Benny comes into the picture, she is spending time with him, [the Respondent] says, and then he realizes, or

maybe he comes to his senses. . . . [H]e says I don't want to deal with her any more. And lo[] and behold, a week later when she doesn't get what she wants, she makes some baseless, ridiculous claim" (Tr. 221). Roberts testified that she spent a great deal of time with the Respondent. She also testified that she had an argument with the Respondent but claimed not to remember what it was about. This lends credence to the Respondent's contention that she was actually angry about him breaking off their affair.

The Respondent is charged here only with threatening Roberts with "a nightstick or similar object." Nevertheless, her credibility suffers from the fact that she originally told the NCPD investigators that the Respondent threatened her with a nightstick, then went back and told them that he struck her with it. Her explanation that she was frightened to tell the truth because she thought no one would believe her is dubious. There is also the matter of Roberts' statement to Dandola, the NYPD investigator, that the Respondent "barely nicked" her and was just trying to scare her. With regard to the incident on September 28, 2006, Roberts testified that she did not see the Respondent's face as the BMW drove by her house, but admitted that she may have written in an NCPD statement that she observed the driver to be the Respondent.

The Respondent's theory of the case, however, goes only so far. Roberts presented herself as a generally forthright and non-malicious witness. There was no evidence of the kind of vindictiveness that would lead someone to falsely accuse a former friend of serious offenses, jeopardize his Department career, and to continue that lie even into this forum.

The kinds of inconsistencies brought out at trial, in the end, enhance Roberts' credibility. If Roberts had wanted to take revenge on the Respondent, it made no sense for her to first only accuse him of threatening her with the object, only to return later and say he actually hit her, creating an inconsistency from the very beginning.



Further, Roberts described the Respondent as appearing at her workplace in a t-shirt and sweatpants, with a “police belt.” There was no indication that the normal attachments for the Department equipment belt, like the holster, handcuff and magazine cases, etc., were on the belt Roberts saw. This would have required the removal of all the attachments from the Respondent’s belt for no other reason than to wear the belt around a pair of pants that are designed to stay up by themselves. Suffice it to say that if Roberts had set out to accuse the Respondent falsely, she could have come up a more sensible story. Notably, when the Court asked Roberts whether it could have been a weightlifting belt – as would have made much more sense, being that the Respondent was a gym-goer – she agreed that this was possible.

Similarly, Roberts could have adhered at trial to her previous NCPD statement that she observed the Respondent in the BMW on September 28, 2006. Instead, she testified that “we just saw the shadow of a guy.” If she were falsely accusing the Respondent of coming to her residence in violation of the order of protection, she would have little incentive to testify at trial that she didn’t actually see him.

Some inconsistencies are to be expected when people testify repeatedly about the same event. These inconsistencies may raise questions about the quality of the witness’ recollection or veracity. Where, as here, the defense claim is not mistaken identity or incorrect perception of a real event, but an outright and continuing lie, the inconsistencies are more in line with a truthful witness than someone concocting a false allegation.

As a party to the action, the Respondent was an interested witness. See People v. Agosto, 73 N.Y.2d 963, 967 (1989); Coleman v. New York City Transit Auth., 37 N.Y.2d 137, 142 (1975). The only apparent inconsistency between the Respondent’s testimony and his prior

statements was that his Official Department Interview does not contain a reference to NCPD officers first stopping him for a traffic violation as he entered the Synergy parking lot.

The Respondent's credibility is perhaps most weakened by his guilty pleas to two violations in satisfaction of the criminal charges against him. At trial, the Respondent asserted that he was completely innocent of both the September 20, 2006, and the September 28, 2006, incidents. This was not a case where, for example, the complainant alleged that the defendant assaulted her in the course of an argument, and the defendant contended that he simply bumped into her by accident. The credibility of his assertion of innocence, then, is damaged by the fact that he admitted, in a criminal proceeding, to two instances in which he harassed Roberts.

In a situation like this the Court must weigh the evidence and resolve conflicting testimony, see Matter of LaFemina v. Brown, 194 A.D.2d 405 (1st Dept. 1993), ultimately deciding who is more credible, Roberts or the Respondent. The Court had the opportunity to observe the witnesses, to see and hear them, and to observe their demeanor. Cf. Matter of Berenhaus v. Ward, 70 N.Y.2d 436, 443 (1987) ("The Hearing Officer before whom the witnesses appeared . . . was able to perceive the inflections, the pauses, the glances and gestures – all the nuances of speech and manner that combine to form an impression of either candor or deception."). In this regard, under the totality of the record, the Court credits Roberts, and finds the Respondent Guilty of threatening her with a metal object at her workplace (Disciplinary Case No. 82415/06, Specification No. 2), and of violating the order of protection issued after his arrest for the workplace incident by driving past Roberts' residence (Disciplinary Case No. 82416/06, Specification No. 1).

Disciplinary Case No. 82415/06, Specification No. 3

At the Department hearing, the Respondent pleaded Guilty to wrongfully possessing, on September 21, 2006, an unauthorized duplicate Department shield, with the number 31806 (this was the Respondent's actual shield number). As such, the Court finds him Guilty.

PENALTY

In order to determine an appropriate penalty, the Respondent's service record was examined. See Matter of Pell v. Board of Education, 34 N.Y.2d 222 (1974). The Respondent was appointed to the Department on July 1, 2002. Information from his personnel folder that was considered in making this penalty recommendation is contained in the attached confidential memorandum.

The Respondent has been found Guilty of coming to the workplace of his female friend and threatening her with a metal object. He has also been found Guilty of violating the subsequent order of protection by purposely driving past her residence. The Department recommended a penalty of termination, citing, inter alia, the nature of the misconduct and the Respondent's "absolute unwillingness to take any responsibility for his actions" (Summation, Tr. 231). The Court disagrees: the Respondent is not obligated to show remorse or contrition in order to receive a lesser penalty; he is entitled to deny the charges against him.

Further, similar cases have resulted in serious penalties, but short of termination. See, e.g., Disciplinary Case No. 83946/08, signed June 24, 2009 (3-year member with no record pleaded guilty and forfeited 40 days, was placed on one year probation, and agreed to counseling, for stalking and harassing ex-girlfriend; on one occasion member ripped necklace from her neck, and on another he forced his way into her apartment by climbing through the

window; member also drove his car back and forth in front of her residence for no legitimate purpose); Disciplinary Case No. 77475/01, signed Mar. 15, 2004 (14-year member with prior adjudication for violating an order of protection forfeited 30 days and was placed on one year probation, for stalking and harassment; he frequently drove past his ex-girlfriend's house, parked outside her house for extended periods of time and watched her through the window, and showed up at public locations where she socialized). The Court notes the facts here, including an attempted physical contact without physical injury, and the violation of a judicial order. Accordingly, the Court recommends that the Respondent be DISMISSED from the New York City Police Department, but that his dismissal be held in abeyance for a period of one year, pursuant to Section 14-115 (d) of the Administrative Code of the City of New York, during which time he is to remain on the force at the Police Commissioner's discretion and may be terminated at any time without further proceedings. In addition, the Respondent was suspended on two occasions for a total of 39 days. Thus, the Court further recommends that the Respondent forfeit 39 days already served on suspension, plus one additional vacation day, for a total of 40 days.

**APPROVED**  
NOV 12 2009  
*[Signature]*  
RAYMOND W. KELLY  
POLICE COMMISSIONER

Respectfully submitted,

*[Signature]*

David S. Weisel  
Assistant Deputy Commissioner – Trials

POLICE DEPARTMENT  
CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials  
To: Police Commissioner  
Subject: CONFIDENTIAL MEMORANDUM  
POLICE OFFICER EDMUND RUMMAN  
TAX REGISTRY NO. 931117  
DISCIPLINARY CASE NOS. 82415/06 & 82416/06

In 2006 and 2008, the Respondent received an overall rating of 4.0 “Highly Competent” on his annual performance evaluation. In 2007, he received a rating of 3.0 “Competent.” [REDACTED] He has no prior formal disciplinary record and has received no Department recognitions.

For your consideration.



David S. Weisel  
Assistant Deputy Commissioner – Trials